

Remarks

The Applicant requests that the above Amendment be entered and the application examined as amended, and in view of the remarks below.

By this Amendment, the Applicant amended claim 65 by deleting the word "removable."

Claims 65, 66, 68-70, 73, 74, 77, 80, 84, 85, and 92-94 remain pending in this application.

1. Response to §112 Rejection

On page 2 of the Action, the Patent Office rejected claims 65-92 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The Applicant believes that the above amendment overcomes this rejection.

2. Response to Obviousness Rejections in view of Ludlow and Kvalvik

On page 2 of the Action, the Patent Office also rejected claims 65, 68, 70, 74, 77, 80, 87 and 92 under 35 U.S.C. 103(a) as obvious in view of the combined teachings of U.S. Patent 5,754,989 of Ludlow [herein "Ludlow"] and U.S. Patent 5,715,546 of Kvalvik [herein "Kvalvik"]. The Applicant submits that these rejections are inappropriate and requests that they be reconsidered and withdrawn.

In the passages in the bottom of page 3 of the Office Action, the Patent Office acknowledges that there is no teaching, suggestion, or motivation in Kvalvik, Ludlow, or the knowledge generally available to one of ordinary skill in the art for the invention recited in claim 65. The Patent Office then relies on the "arena of the KSR discussion" and the all-encompassing rubric of "common sense" in support of its rejection. Specifically, the Patent Office asserts that

since “[Kvalvik] show[s] the use of a speaker in a head rest of a spa...to employ a speaker in the head rest of an identical art device [of] Ludlow would have been in the arena of the KSR discussion of the application of common sense.” With all deference to Thomas Paine, the Applicant respectfully submits that this might be true if the applicant were claiming “a speaker in a headrest of a spa” - but that is not what is being claimed. As clearly recited in claim 65,

a head rest mounted on or below the upper rim so as not to substantially alter the substantially uniform elevation [of the spa] and adapted to support the head of an occupant of the spa, the head rest having at least one sound emitting perforation; and
at least one electronic speaker... [Emphasis added.]

As emphasized repeatedly in this proceeding, most recently in section 3 of the previous response, aspects of the invention do not substantially alter the elevation of the spa and thus facilitate packing, shipping, and covering the spa. Kvalvik clearly and unequivocally provides a headrest for its speaker that protrudes above the general elevation of its tub liner. That is, contrary to the claimed invention, Kvalvik substantially alters the substantially uniform elevation of the tub liner of Kvalvik. And, even if the speaker of Kvalvik could be inserted into the head rest of if Ludlow, such a speaker must require the protruding headrest of Kvalvik. There is no teaching, suggestion, or motivation in either reference to provide a speaker to a headrest by any other means.

Moreover, as discussed most clearly in section 5 of the previous response, the Applicant submits that due to the plumbing of Ludlow, that is, the manifolds 139 mounted directly beneath headrests 175, the insertion of Kvalvik's speaker in the headrest of Ludlow essentially requires that the Ludlow headrest be modified to, contrary to the claimed invention, protrude above the spa of Ludlow. Contrary to the statements made by the Patent Office, there is nothing but evidence that the position of the Ludlow headrest would have to be sacrificed. Otherwise, Kvalvik's speaker will simply not fit - it's common sense.

With regard to the Patent Office's comments concerning "the patentable merit in a running of speaker wire" being "fundamentally absurd in the modern day art," the Applicant respectfully submits that the Patent Office attempts at sarcasm only hinder this proceeding. Any conscientious reviewer of the previous response would clearly not infer that the Applicant is in anyway claiming speaker wire or its routing. As would be evident in a bona fide consideration of the Applicant's argument, the discussion of "speaker wire" is presented to illustrate the inappropriateness of the Patent Office's combination of Kvalvik and Ludlow.

The Patent Office states that the introduction of the Ludlow speaker to the headrest of Kvalvik would not "substantially alter the substantially uniform elevation," as claimed, because the Ludlow "cushion resides there." This is nonsense. The introduction of the speaker of Kvalvik to the tub liner of Kvalvik inherently alters the elevation of the tub liner to accommodate the speaker. The introduction of a similar speaker into Ludlow cannot but alter the elevation of the spa of Ludlow. As discussed above, there is no other room in Ludlow to accommodate a speaker without altering the elevation of the Ludlow spa.


Again, the Applicant respectfully submits that there is no teaching, suggestion, motivation, in the cited art, in the knowledge generally available to one of ordinary skill in the art, or in the application of "common sense" for the claimed invention having "a head rest mounted on or below the upper rim so as not to substantially alter the substantially uniform elevation [of the spa]" and a speaker, as recited in claim 65. The Applicant respectfully requests that this rejection be reconsidered and withdrawn.

With respect to the rejections of dependent claims 66, 68-70, 73, 74, 77, 80, 84, 85, and 92-94, the Applicant submits that these claims are not obvious in view of Ludlow and Kvalvik for the same reasons that claim 65, from which they depend, is not obvious. The Applicant respectfully requests that these rejections also be reconsidered and withdrawn.

Conclusion

The Applicant believes that the above Amendment and Remarks overcome the rejections in the subject Office Action and place the application in condition for allowance. A favorable action on the merits of the application is requested. If a telephone conference would be of assistance in advancing prosecution of this application, the Applicant's undersigned Agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,



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